

declined in recent years and has been extirpated from many areas where it was formerly common. It inhabited streams, rivers, springs, and irrigation ditches in the Owens Basin of Mono and Inyo Counties, California. The Owens tui chub now occurs in only two habitats, the headwaters of the Hot Creek and in a short segment, approximately 8 miles long, of the Owens River below Long Valley Dam, both in Mono County, California. Critical habitat is included with this proposal. If made final, this proposed rule would protect this subspecies and the critical habitat of its wild populations and provide for the species recovery. The Service seeks data and comments from all interested parties on this proposal.

**DATES:** Comments from all interested parties must be received by May 22, 1984. Public hearing requests must be received by May 7, 1984.

**ADDRESSES:** Interested persons or organizations are requested to submit comments to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials relating to this rule are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sanford R. Wilbur, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah St., Portland, Oregon 97232, (503/231-6131).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Owens tui chub (*Gila bicolor snyderi*) was described as a new subspecies in 1973 (Miller, 1973), but has been known to scientists since the late 1800's. Sporadic fish collections made around the turn of the century indicated the presence of chubs in the Owens River (Snyder, 1917) and Owens Lake (Gilbert, 1893). The collections of Carl Hubbs (reported by Miller, 1973), made during the 1930's, provide the first major survey of the Owens Basin aquatic habitats. Owens tui chubs were collected by Hubbs and coworkers in the following areas: irrigation canals south of Bishop, Owens River, headsprings of Fish Slough, drainage ditches south of Big Pine, North Fork of Bishop Creek, Bishop Creek, Hot Creek, headwater springs of Hot Creek, Whiskey Creek, Owens Lake, ponds at Lone Pine, Morton's Slough and various ditches emanating from the Owens River. However, by the time the Owens tui chub, endemic to the Owens Basin of

Inyo and Mono Counties, California, was described as *Gila bicolor snyderi* in 1973, the status of the fish was declining rapidly.

Habitat alteration, predation and competition by exotic fishes, and hybridization with introduced Lahontan tui chubs have eliminated pure Owens tui chubs from all but two localities. Owens tui chubs are now known only from an approximately 8 mile section of the Owens River below Long Valley Dam and from 2 adjacent headwater springs of Hot Creek. The population in the Owens River is greatly reduced in numbers because of predation by brown trout. The population in the headwater springs of Hot Creek is small and is threatened by the presence of exotic fishes. These two springs represent less than 1 percent of the original available habitat. The springs and the adjacent lands are owned by the city of Los Angeles but there are no plans for development in the area. The status of the Owens tui chub, which is the most precarious of any fish in the Death Valley region (Pister, 1980), has resulted in the fish being classified as Endangered by the State of California (CDFG, 1980).

The Owens tui chub was included in the Service's December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58454-60). In this review, the Owens tui Chub was listed as a category 1 species indication that the Service currently has substantial information on hand to support a proposed rule to list the species as endangered or threatened. On April 12, 1982, the Service was petitioned by the Desert Fishes Council to list the Owens tui chub. After evaluation of this petition, the Service found that the petitioned action was warranted. A notice of finding for this petition was published in the *Federal Register* on June 14, 1983 (48 FR 27273-27274).

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Owens tui chub (*Gila bicolor snyderi*) are as follows.

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for the Owens tui chub (*Gila bicolor snyderi*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes the Owens tui chub to be an endangered species. This action is being taken because the Owens tui chub has

*A. The present or threatened destruction, modification, or curtailment of its habitat or range.* Ichthyological surveys conducted during the 1930's and 1940's found Owens tui chubs common in a wide range of aquatic habitats in the Owens Basin. Since that time, many habitats have been modified, streams have been diverted, and rivers have been impounded.

Demand for the water resources of the Owens Basin is high. Water is used for local agricultural and municipal purposes. The largest consumer of Owens Basin water is the city of Los Angeles, which through a system of diversion structures and aqueducts, conducts the water to the Los Angeles Basin. Because of the various demands, most waters have been adversely modified by man. This physical habitat alteration, often accompanied by an increase in exotic fishes, has reduced available habitat for the Owens tui chub.

*B. Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence to suggest that the Owens tui chub has declined as a result of overutilization.

*C. Disease or predation.* Numerous exotic fishes and other aquatic organisms have been introduced into the Owens Basin. Pister (1981) reports that 18 exotic fishes have been introduced into the Owens River, which historically supported 4 native fishes. Predation by brown trout, *Salmo trutta*, is responsible for the reduced numbers of Owens tui chubs below Long Valley Dam. Exotic fishes are the major threat facing the population of Owens tui chubs in the Owens River system.

*D. The inadequacy of existing regulatory mechanisms.* The State of California has a provision in their endangered species law to protect the Owens tui chub from taking but has no authority to protect its habitat. If listed, the Owens tui chub would be eligible for funding by the State and Federal Government for its conservation and recovery.

*E. Other natural or manmade factors affecting its continued existence.* Lahontan tui chubs have been introduced into many waters of the Owens Basin as bait fish. Subsequently, they have hybridized extensively with the native and closely related Owens tui chub. The hybridization problem was first recognized in 1973 at Crowley Lake where fishermen had apparently illegally introduced the Lahontan tui chub as bait while fishing (Miller, 1983). Since that time, hybridization with Lahontan tui chubs has been shown to be a major problem throughout the range of the Owens tui chub. Pure Owens tui

chubs are now restricted to two known localities.

#### Critical Habitat

Critical habitat, as defined by Section 3 of the Act and at 50 CFR Part 424, means (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

The Act in Section 4(a)(3) requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat for the Owens tui chub is being proposed in two areas:

1. *California, Mono County.* Owens River and 50 feet on each side of the river from Long Valley Dam downstream for a distance of 8 stream miles.

2. *California, Mono County.* Hot Creek and its headwater springs and their outflow including 50 feet on all sides of the springs and Hot Creek.

The areas proposed as critical habitat for the Owens tui chub satisfy all known criteria for the ecological, behavioral, and physiological requirements of the species. This fish successfully reproduces in the headwater springs of Hot Creek where the population is small, probably several hundred fish, but viable. The population in the Owens River was very successful prior to the introduction of exotic fishes. The Owens River continues to support a small but viable population in the 8 stream miles below the dam. The Owens River below Long Valley Dam would provide excellent habitat for the Owens tui chub if the exotic fishes can be eliminated or their populations reduced. The area of 50 feet adjacent to the streams and springs is included for the protection of the riparian habitat which is important in the maintenance of the aquatic ecosystems.

The areas proposed include the entire habitat of this subspecies. Modifications to the critical habitat descriptions may be proposed in the future.

Section 4(b)(8) requires that for any proposed or final regulation which designates critical habitat, a brief description and evaluation of those activities (public and private) which

may adversely modify such habitat or may be affected by such designation must be provided. Such activities are identified for the habitat of the Owens tui chub as follows:

1. Introduction of aquatic organisms;
2. Activities that decrease available waters or cause a significant change in the physical or chemical properties (e.g., temperature or dissolved gases) of the water;
3. Removal of natural riparian vegetation, except what might be required to maintain some open water; and
4. Pollution of aquatic habitats or adjacent terrestrial environments.

No presently known activities involving Federal agencies affect the critical habitat of the Owens tui chub, nor is any Federal involvement anticipated in these areas. If the Service becomes aware of any involvement in the future, consultation with the appropriate Federal agency would be initiated to determine the extent of the impact and appropriate alternative measures, if necessary. Any Federal agency which feels its actions might affect the survival or continued existence of the Owens tui chub should enter into consultation with the Service.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will evaluate the geographic critical habitat designation at the time the final rule is prepared, after considering all additional information obtained.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and taking and harm prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see

proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If an action "may affect" a listed species, the Federal agency must enter into consultation with the Service. At this time, there are no known Federal activities which will be impacted by this proposal.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale listed species in interstate or foreign commerce. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exception would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out the otherwise prohibited activities involving endangered animal species under certain circumstances. Endangered species permits are governed by 50 CFR 17.22 and 17.23 and Section 10(a) of the Act. Such permits are available for scientific purposes or to enhance the propagation or survival of the species, or to take species as an incident to otherwise lawful activities in limited circumstances. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

#### Public Comments Solicited

The Service intends that any final rule adopted will be as accurate and effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private

interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the Owens tui chub;
- (2) The location of and the reasons why any habitat of this subspecies should or should not be determined to be critical habitat as provided for by Section 4 of the Act;
- (3) Additional information concerning the range and distribution of this subspecies;
- (4) Current or planned activities in the subject area and their possible impacts on the Owens tui chub; and
- (5) The foreseeable economic and other impacts resulting from the proposed critical habitat designation.

Final promulgation of the regulations on the Owens tui chub will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

#### References

California Department of Fish and Game.  
1980. At the crossroads 1980, a report on California's endangered and rare fish and wildlife. 147 pp.

Gilbert, C. H. 1893. Report on the fishes of the Death Valley expedition collected in southern California and Nevada in 1891, with description of new species. No Amer. Fauna, No. 7.

Miller, R. R. 1973. Two new fishes, *Gila bicolor snyderi* and *Catostomus fumeiventris*, from the Owens River Basin, California. Occ. Pap. Mus. Zool. Univ. Michigan 667:1-19.

Pister, E. P. 1980. Death Valley system committee report. Proc. Desert Fishes Council 12:8-13.

Pister, E. P. 1981. The conservation of desert fishes. Pages 411-445 in Fishes in North American deserts. R. J. Naiman and D. L. Soltz (eds.) John Wiley and Sons, New York.

Snyder, J. O. 1917. An account of some fishes from Owens River, California. Proc. U.S. Nat. Mus. 54:201-5.

#### Author

The primary author of this rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814. (916/440-2791 or FTS 448-2791).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the United States Code of Federal Regulations, as set forth below:

#### PART 17—[AMENDED]

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order, under fishes, to the List of Endangered and Threatened Wildlife:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Chub, Owens tui	<i>Gila bicolor snyderi</i>	U.S.A. (CA)	Entire	E		17.95(e)	NA

3. It is further proposed to amend § 17.95(e) by adding critical habitat of the Owens tui chub as follows: The position of this and any following Critical Habitat entries under § 17.95(e) will be determined at the time of publication of a final rule.

**§ 17.95 Critical habitat-fish and wildlife.**

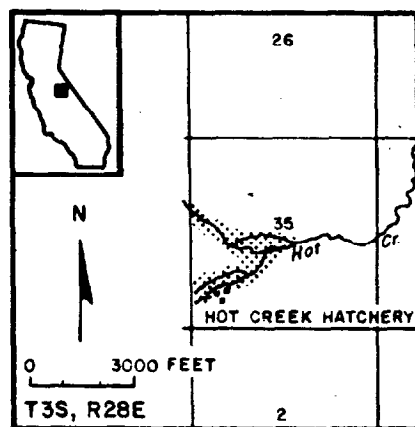
(e) \* \* \*

**Owens tui chub**

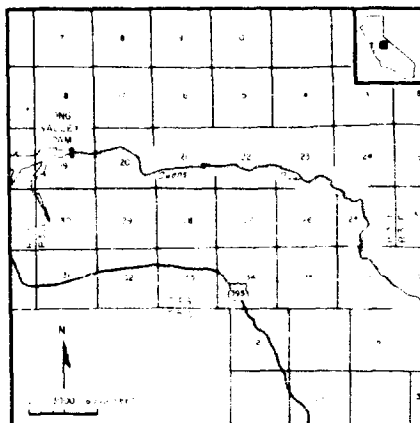
*Gila bicolor snyderi*

*California, Mono County.*

1. Hot Creek and adjacent springs near Hot Creek Hatchery including 50 feet on all sides of the creek and springs. in T3S, R28E, SW 1/4 Section 35.



2. Owens River, including 50 feet on both sides of the river, for 8 stream miles below Long Valley Dam in T4S, R30E, Sections 19, 20, 21, 22, 23, 24, 25, and 36.



Known constituent elements include clean permanent flowing streams and or springs with riparian vegetation, deep pools, overhanging banks, aquatic vegetation, and the absence of exotic fishes.

Dated: March 8, 1984.

**G. Ray Arnett,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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**BILLING CODE 4310-07-M**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 650**

**Atlantic Sea Scallop Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of public hearing.

**SUMMARY:** The New England Fishery Management Council will hold a public hearing in conjunction with its regular monthly meeting to allow for input on a proposed amendment to the Sea Scallop Fishery Management Plan.

**DATE:** The hearing will be held on Tuesday, April 3, 1984, at 1:30 p.m.

**ADDRESS:** The hearing will take place at the Howard Johnson's Motor Lodge, Interstate Traffic Circle, Portsmouth, NH.

**FOR FURTHER INFORMATION CONTACT:**

Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1) Saugus, MA 01906.

**SUPPLEMENTARY INFORMATION:** On May 15, 1984, the regulated minimum average meat count standard for sea scallops is scheduled to change from 35 meats per pound to 30 meats per pound. The amendment to the sea Scallop Fishery Management Plan proposes to implement a 40 meat count (equivalent) minimum size for sea scallops to replace the 30 meat count average through emergency action by May 15, 1984. The proposed minimum size regulation will delay harvest of scallops until they have reached sexual maturity and stop the present practice of taking small scallops which have not fully matured and had an opportunity to spawn.

Dated: March 20, 1984.

**Roland Finch,**

*Director, Office of Fisheries Management National Marine Fisheries Service.*

[FR Doc. 84-7933 Filed 3-22-84; 8:45 am]

**BILLING CODE 3510-22-M**